

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chelsea Yogerst	Team: Squad #12	CCRB Case #: 201411475	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/07/2014 8:00 PM, Saturday, 11/08/2014	Location of Incident: 673 East 140th Street and the 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 5/7/2016	EO SOL 5/7/2016	
Date/Time CV Reported Wed, 11/12/2014 11:05 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 11/12/2014 11:05 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Fraioli	5216	954822	PBBX
2. POM Malik Mccloud	30082	954114	PBBX
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ernesto Bautista	28399	953671	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM David Fraioli	Abuse: On November 7, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli stopped § 87(2)(b)	
B.POM David Fraioli	Abuse: On November 7, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli threatened § 87(2)(b) with the use of force.	
C.POM David Fraioli	Discourtesy: On November 7, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli spoke rudely to § 87(2)(b)	
D.POM David Fraioli	Abuse: On November 8, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli stopped § 87(2)(b)	
E.POM Malik Mccloud	Abuse: On November 8, 2014, at 673 East 140th Street in the Bronx, PO Malik Mccloud stopped § 87(2)(b)	
F.POM David Fraioli	Force: On November 8, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli used physical force against § 87(2)(b)	
G.POM Malik Mccloud	Force: On November 8, 2014, at 673 East 140th Street in the Bronx, PO Malik Mccloud used physical force against § 87(2)(b)	
H.POM David Fraioli	Force: On November 8, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.POM David Fraioli	Discourtesy: On November 8, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli spoke rudely to § 87(2)(b)	
J. An officer	Force: On November 8, 2014, at the 40th Precinct stationhouse, an officer used physical force against § 87(2)(b)	

Case summary

On November 7, 2014, at approximately 8:00 p.m., while § 87(2)(b) exited 673 East 140th Street in the Bronx with § 87(2)(b) PO Fraioli approached § 87(2)(b) told him that he had an open warrant, and allegedly said, “I will slap the shit out of you” (**Allegations A, B and C**).

On November 8, 2014 at approximately 11:00 p.m., § 87(2)(b) was gambling with an unidentified male in front of 673 East 140th Street in the Bronx where his § 87(2)(b) § 87(2)(b) resides.

PO David Fraioli and PO Malik Mccloud, both of Patrol Borough Bronx, approached § 87(2)(b) while he was in the courtyard and yelled “Stay right there!” (**Allegations D and E**) § 87(2)(b) ran into the building at this location. The officers followed § 87(2)(b) and caught up to him on the second floor.

PO Mccloud punched § 87(2)(b) in the ribs an undetermined amount of times and punched him in the jaw once, which caused swelling. Simultaneously, PO Fraioli punched him in the ribs. While PO Mccloud was attempting to place § 87(2)(b) on the ground, § 87(2)(b) bit him. PO Mccloud then punched § 87(2)(b) in the jaw while PO Fraioli held his arms in order to handcuff them. Eventually, § 87(2)(b) was placed on the floor before an officer placed a knee on his back (**Allegations F and G**).

§ 87(2)(b)'s mother § 87(2)(b) yelled at the officers that she was his mother and attempted to show the officers identification. PO Fraioli allegedly told her to stand back and stated that if she did not, they would arrest her. PO Fraioli then allegedly pushed § 87(2)(b) away, by her left arm (**Allegation H**). PO Fraioli also allegedly said statements such as “get the fuck out of here” and “mind your fucking business (**Allegation I**).

§ 87(2)(b) was then escorted into a police vehicle and was brought to the 40th Precinct stationhouse. While at the precinct, an officer took him into the bathroom and then allegedly pushed § 87(2)(b) in the back and then threw him against the wall, onto the floor, and into the sink (**Allegation J**).

§ 87(2)(b) was arrested for resisting arrest, obstructing governmental administration, aggravated harassment and received a summons for loitering.

This case was originally assigned to Investigator Stephanie Mleckowski. On December 8, 2014, the case was reassigned to Investigator Chelsea Yogerst.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because of the arrest.
- § 87(2)(b) filed a Notice of Claim with the City of New York on behalf of her son, claiming that he sustained physical, emotional and psychological injuries. § 87(2)(b) is seeking \$50 million dollars as redress. The claim was received by the New York City Comptroller’s Office on November 21, 2014 (see 04 Board Review)
 - On April 17, 2015 the undersigned submitted an inquiry to the New York City Comptroller’s Office in regard to the scheduled 50h Hearing. The response to the inquiry stated that they did not have a record of the notice of claim (see 05 Board Review).
- The Office of Court Administration database has no record of § 87(2)(b)'s arrest or any criminal conviction history unrelated to the arrest (see 06 Board Review).

Civilian and Officer CCRB History

- PO Fraioli has been a member of the service for 1 year and has no prior CCRB complaints.
- PO Mccloud has been a member of the service for 1 year and has one prior CCRB complaint that does not reflect a pattern applicable to this case.
- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (see 07 Board Review).

Video Footage

- The video footage for the incident on November 8, 2014, (see 08 Board Review) provided by § 87(2)(b) shows two male police officers (determined by the investigation to be PO Mccloud and PO Fraioli) apprehending § 87(2)(b) while he is on the floor. The officers are seen escorting § 87(2)(b) out of the building and into a patrol car. Civilians can be heard shouting in English and Spanish.
- None of the prior interaction during which the alleged misconduct and physical force occurred can be seen on the video footage.

NYPD Documents

Arrest Report (§ 87(2)(b))

The pertinent arrest report for November 8, 2014, (see 09 Board Review), prepared by PO Fraioli, states that “the deft was observed rolling dice and gambling, upon approaching defendant, he fled, when caught up to deft he refused to put his hands behind his back, by flailing his arms up in the air. The report also mentions that force was used.

Arrest Photograph

§ 87(2)(b)'s arrest photograph (see 10 Board Review) does not show any visible injuries.

Command Log

The 40th Precinct Command Log (see 11 Board Review) shows that § 87(2)(b) was brought to the stationhouse at 11:25 p.m. and notes that his physical and mental conditions were apparently normal.

Findings and Recommendation

Allegations Not Plead

As per § 87(2)(b)'s own admission, she was within a foot of the officers while they struggled to get § 87(2)(b) into handcuffs. When PO Fraioli warned § 87(2)(b) that she could be subject to arrest if she did not step back, he was providing her with accurate information about the potential consequence of her interference. Therefore, this allegation was not pleaded.

§ 87(2)(b) testified that her daughter, § 87(2)(b) informed her that PO Mccloud pushed her. Given that § 87(2)(b) did not actually see the push occur and because a statement could not be obtained from § 87(2)(b) because § 87(2)(b) would not provide her contact information because she is a minor, this allegation was not pleaded.

Subject Officer Identification

- Although PO Fraioli denied that he interacted with § 87(2)(b) on November 7, 2014, § 87(2)(b) testified that this interaction included the same officer as the incident on November 8, 2014. Given that PO Fraioli was on duty on November 7, 2014, at approximately 8:00

p.m. and was within the vicinity of the incident location at this time, **Allegations A, B and C** are being pleaded against him.

- Following the incident, § 87(2)(b) went to the 40th Precinct stationhouse and spoke to a supervising officer who identified PO Fraioli and PO Mccloud as the officers involved in the incident.
 - Given that PO Fraioli fit the description that § 87(2)(b) provided and admitted to his interaction with § 87(2)(b) on November 8, 2014, **Allegations D, F, H, and I** are being pleaded against him.
 - Given that PO Fraioli verified that PO Mccloud was his partner on November 8, 2014, and PO Mccloud fit the description that § 87(2)(b) provided and admitted to interacting with § 87(2)(b) **Allegations E and G** are being pleaded against him.
- Between May 12, 2015, and May 29, 2015, the undersigned investigator contacted § 87(2)(b) five times via telephone in an attempt to schedule him for a photo array. On three occasions voicemails were left and on two occasions § 87(2)(b) stated that he would talk to his mother and call back at a later time so that he could be scheduled, however he never did so. On May 12, 2015, and May 26, 2015, please call letters were sent to § 87(2)(b) and were not returned by the United States Postal Service.
 - Due to the fact that § 87(2)(b) interacted with this officer during a tour change and because the physical description he provided of the officer was not only vague but matched the pedigree information of multiple officers, a photo array was necessary to identify him. As § 87(2)(b) was uncooperative when it came to participating in a photo array, it is recommended that **Allegation J** be closed as **officer unidentified**.

Recommendations

Allegation A: Abuse of Authority: On November 7, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli stopped § 87(2)(b)

Allegation B: Abuse of Authority: On November 7, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli threatened § 87(2)(b) with the use of force.

Allegation C: Discourtesy: On November 7, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that PO Fraioli stopped him, told him that he had an open warrant and said, “I will slap the shit out of you.” The officers then let § 87(2)(b) go.

§ 87(2)(b) testified that PO Fraioli told § 87(2)(b) that one day he was going to punch him in the face.

PO Fraioli denied that he had any interaction with § 87(2)(b) on November 7, 2014. He also denied that he ever told § 87(2)(b) that he was going to “slap the shit out of him” or punch him in the face.

PO Bautista denied that he had an interaction with § 87(2)(b) on November 7, 2014 and denied that he heard PO Fraioli tell § 87(2)(b) that they were going to slap the shit out of him or punch him in the face. He also denied that PO Fraioli ever informed him that he said any of these alleged statements to § 87(2)(b). PO Bautista stated that PO Fraioli never asked § 87(2)(b) for his name or to run his name and denied that he ever told § 87(2)(b) that they an open warrant for his arrest.

§ 87(2)(b), § 87(2)(g)

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Allegation D-Abuse of Authority: On November 8, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli stopped § 87(2)(b)

Allegation E-Abuse of Authority: On November 8, 2014, at 673 East 140th Street in the Bronx, PO Malik Mccloud stopped § 87(2)(b)

§ 87(2)(b) stated that he was rolling dice and gambling with an unidentified individual when PO Fraioli and PO Mccloud approached him. Prior to the officers' arrival, § 87(2)(b) and this individual exchanged paper money but there was no money on the ground. The officers told § 87(2)(b) to stay right there but instead, § 87(2)(b) ran into the building. Once the officers caught up to § 87(2)(b) on the second floor, they placed him under arrest.

PO Fraioli testified that while he was conducting a vertical patrol with PO Mccloud, he saw § 87(2)(b) and an individual rolling dice on the floor of a courtyard area. When PO Fraioli and PO Mccloud first approached § 87(2)(b) picked up money that was on the ground and ran away from them. While PO Mccloud pursued § 87(2)(b) PO Fraioli picked up the dice and put them in his pocket. PO Mccloud and PO Fraioli caught up with § 87(2)(b) on the second floor and asked § 87(2)(b) to put his hands behind his back. § 87(2)(b) did not comply. § 87(2)(b) was handcuffed while he was standing against a wall and was immediately escorted into the police vehicle.

PO Mccloud's statement was consistent with PO Fraioli's with the only exceptions noted below. PO Mccloud believed that § 87(2)(b) was gambling because although he did not see if any money was involved or exchanged, he was rolling dice and later ran away from the officers which made him look suspicious. PO Mccloud also testified that when he and PO Fraioli first approached § 87(2)(b) they asked for his ID several times and introduced themselves as officers. § 87(2)(b) told the officers to get out of there and that he wasn't going to give them his ID.

Penal Law 240.35 (see 01 Board Review) states that "a person is guilty of loitering when he loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia." According to People v. Nunez, NY Slip OP 7753 (2013) (see 02 Board Review), "the pursuit of a fleeing individual constitutes a stop and that flight, combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, may give rise to reasonable suspicion, the necessary predicate for either a stop or pursuit."

It is undisputed that § 87(2)(b) was gambling with dice when PO Fraioli and PO Mccloud arrived at the location. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

Allegation F-Force: On November 8, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli used physical force against § 87(2)(b)

Allegation G-Force: On November 8, 2014, at 673 East 140th Street in the Bronx, PO Malik Mccloud used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Mccloud punched him in the ribs an undetermined amount of times and punched him in the jaw once. Simultaneously, PO Fraioli punched him in the ribs. § 87(2)(b) admitted that while PO Mccloud was attempting to place him on the ground, he bit him. In response, PO Mccloud punched him in the jaw. PO Fraioli then held § 87(2)(b)'s arms in order to handcuff him before he was placed on the floor. One of the officers then allegedly placed a knee on § 87(2)(b)'s back. § 87(2)(b) denied that he spit at the officers but stated that he did push the officers. While he was on the floor, § 87(2)(b) moved his body and said, "Leave me alone" while the officers attempted to handcuff him. § 87(2)(b) stated that he received lumps on his head, a cut on his shoulder and a swollen jaw from the excessive force used during his apprehension.

§ 87(2)(g), § 87(2)(b)

Allegation I- Discourtesy: On November 8, 2014, at 673 East 140th Street in the Bronx, PO David Fraioli spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that PO Fraioli stated “get the fuck out of here” and “mind your fucking business.”

PO Fraioli testified that at no point did he or PO Mccloud say the alleged statements. He could not recall if he used profanity during the incident.

PO Mccloud denied that he or his partner ever said the alleged statements and denied using profanity during the incident.

§ 87(2)(b), § 87(2)(g)

Allegation J: Force: On November 8, 2014, at the 40th Precinct stationhouse, an officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that while at the 40th Precinct, an officer took him into the bathroom, pushed him in the back and threw him against the wall, onto the floor, and into the sink.

§ 87(2)(b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date